MOTION FILED
DEC 17 1987

(3)

No. 87-731

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

GLOBE NEWSPAPER COMPANY
AND DAVID FARRELL,
Petitioners,
vs.
EDWARD J. KING,
Respondent.

MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE AND BRIEF AMICI CURIAE OF AMERICAN NEWSPAPER PUBLISHERS ASSOCIATION, AMERICAN SOCIETY OF NEWSPAPER EDITORS, SOCIETY OF PROFESSIONAL JOURNALISTS, SIGMA DELTA CHI, AND REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS IN SUPPORT OF PETITION FOR CERTIORARI

RICHARD M. SCHMIDT, JR.
Cohn and Marks
1333 New Hampshire Ave., NW
Washington, D.C. 20036
(202) 293-3860
Attorney for Amicus Curiae American Society of Newspaper Editors

*ARTHUR D. MCKEY
Hanson, O'Brien, Birney & Butler
888 17th Street, NW
Washington, D.C. 20006
(202) 298-6161
Attorney for Amici Curiae

BRUCE W. SANFORD
Baker & Hostetler
1050 Connecticut Ave., NW
Washington, D.C. 20036
Attorney for Amicus Curiae Society of Professional Journalists, Sigma Delta Chi

W. TERRY MAGUIRE
P.O. Box 17407
Dulles International Airport
Washington, D.C. 20041
(703) 648-1000
Attorney for Amicus Curiae American Newspaper Publishers Association

JANE E. KIRTLEY
800 18th Street, NW
Suite 300
Washington, D.C. 20006
Attorney for Amicus Curiae Reporters Committee for Freedom of the Press

* Counsel of Record

18 pp

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

No. 87-731

GLOBE NEWSPAPER COMPANY
AND DAVID FARRELL,

Petitioners,

vs.

EDWARD J. KING,

Respondent.

MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE

Your amici respectfully request leave to file the attached brief on behalf of the American Newspaper Publishers Association, the American Society of Newspaper Editors, The Society of Professional Journalists, Sigma Delta Chi, and the Reporters Committee for Freedom of the Press in support of the Petition for Certiorari of Globe Newspaper Company and David Farrell. Petitioners have consented to the filing of this brief. A copy of said letter of consent has been filed with the Clerk of this Court. Respondent has declined to consent to the filing of this brief.

The American Newspaper Publishers Association ("ANPA") has over 1,400 members throughout the country, including numerous newspapers in Massachusetts. The American Society of Newspaper Editors ("ASNE") is the nationwide, professional organization of daily newspaper editors with 950 members nationwide, including numerous Massachusetts members. The Society of Professional Journalists, Sigma Delta Chi, is an organization dedicated to defending press freedom with members nationwide. The Reporters Committee for Freedom of the Press is a voluntary association of working journalists dedicated to protecting the First Amendment. All four amici are gravely concerned about the impact of the decision of the Supreme Judicial Court of Massachusetts in this case upon their members and supporters.

Your amici are familiar with the questions involved and the scope of their presentation and believe there is a necessity for additional argument as to whether the Supreme Judicial Court of Massachusetts applied an unconstitutional standard in contravention of this Court's pronouncements in *New York Times* v. *Sullivan* and *St. Amant* v. *Thompson*. Additional argument is particularly appropriate in light of Petitioners' request for summary reversal. The attached brief sets forth additional authorities which are presented in order to assist this Court in summarily deciding this case on the merits.

Because of the important issues of Federal constitutional law presented in this case, your amici urge this Court to grant the Motion for Leave to File the attached Brief Amici Curiae.

Respectfully submitted,

RICHARD M. SCHMIDT, JR.
Cohn and Marks
1333 New Hampshire Ave., NW
Washington, DC 20036
(202) 293-3860
Attorney for Amicus Curiae American Society of Newspaper Editors

*ARTHUR D. MCKEY
Hanson, O'Brien, Birney & Butler
888 17th Street, NW
Washington, DC 20006
(202) 298-6161
Attorneys for Amici Curiae

BRUCE W. SANFORD
Baker & Hostetler
1050 Connecticut Ave., NW
Washington, DC 20036
Attorney for Amicus Curiae Society of Professional Journalists, Sigma Delta Chi

W. TERRY MAGUIRE
P.O. Box 17407
Dulles International Airport
Washington, DC 20041
(703) 648-1000
Attorney for Amicus Curiae American Newspaper Publishers Association

JANE E. KIRTLEY
800 18th Street, NW
Suite 300
Washington, DC 20006
Attorney for Amicus Curiae Reporters Committee for Freedom of the Press

* Counsel of Record

TABLE OF CONTENTS

	PAGE
TABLE OF AUTHORITIES	ii
PRELIMINARY STATEMENT	1
INTEREST OF THE AMICI	1
SUMMARY OF ARGUMENT	3
ARGUMENT	4
I. THIS COURT SHOULD SUMMARILY REVERSE THE OPINION OF THE SUPREME JUDICIAL COURT OF MASSACHUSETTS BECAUSE OF THE GRAVE DEPARTURE FROM ESTABLISHED CONSTITUTIONAL PRINCIPLES IN THIS FIRST AMENDMENT CASE	4
II. THE DECISION BELOW IS A SERIOUS DEPARTURE FROM *NEW YORK TIMES v. SULLIVAN* WHICH WILL RESULT IN SUBSTANTIAL RESTRICTIONS ON POLITICAL SPEECH	5
III. THE MISAPPLICATION BY THE COURT BELOW OF THE CONSTITUTIONAL RULE OF *ST. AMANT v. THOMPSON* IS REVERSIBLE ERROR	9
CONCLUSION	13

TABLE OF AUTHORITIES

	PAGE
CASES:	
Anderson v. *Liberty Lobby*, 477 U.S. 242 (1986)	12
Beckley Newspapers v. *Hanks*, 389 U.S. 81 (1967)	11
Bose v. *Consumers Union of the United States, Inc.*, 466 U.S. 485 (1984)	11
Garrison v. *Louisiana*, 379 U.S. 64 (1964)	9,11
Gertz v. *Robert Welch, Inc.*, 418 U.S. 323 (1974)	11
Guthrie v. *Annabel*, 50 Ill. App.3d 969, 365 N.E.2d 1367, 3 Media L. Rptr. (BNA) 1152 (1977)	11
Herbert v. *Lando*, 441 U.S. 153 (1979)	11
Monitor Patriot Co. v. *Roy*, 401 U.S. 265 (1971)	11
New York Times Co. v. *Sullivan*, 376 U.S. 254 (1964)	*Passim*
Oklahoma Publishing Co. v. *District Court*, 430 U.S. 308 (1979)	3,4
Orr v. *Argus-Press Co.*, 586 F.2d 1108 (6th Cir. 1978), *cert. denied*, 440 U.S. 960 (1979)	11
Reliance Insurance Co. v. *Barron's*, 442 F. Supp. 1341 (S.D.N.Y. 1977)	11
Rose v. *Koch*, 278 Minn. 235, 154 N.W.2d 409 (1967)	11
St. Amant v. *Thompson*, 390 U.S. 727 (1968)	*Passim*
Time, Inc. v. *Pape*, 401 U.S. 279 (1971)	11
Wolston v. *Reader's Digest Ass'n., Inc.*, 443 U.S. 157 (1979)	11
OTHER AUTHORITIES:	
Nelson, *Seditious Libel in Colonial America*, 3 Am. J. Legal Hist. 160 (1959)	7

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

No. 87-731

GLOBE NEWSPAPER COMPANY
AND DAVID FARRELL,
Petitioners,

vs.

EDWARD J. KING,
Respondent.

BRIEF AMICI CURIAE OF AMERICAN NEWSPAPER PUBLISHERS ASSOCIATION, AMERICAN SOCIETY OF NEWSPAPER EDITORS, SOCIETY OF PROFESSIONAL JOURNALISTS, SIGMA DELTA CHI, AND REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS IN SUPPORT OF PETITION FOR CERTIORARI

PRELIMINARY STATEMENT

The American Newspaper Publishers Association, the American Society of Newspaper Editors, The Society of Professional Journalists, Sigma Delta Chi, and the Reporters Committee for Freedom of the Press submit this brief *amici curiae* in support of the Petition for Certiorari filed by The Boston Globe Company and David Farrell.

INTEREST OF THE AMICI

American Newspaper Publishers Association ("ANPA") is a non-profit membership corporation organized under the laws of the Commonwealth of Virginia. Its membership consists of nearly 1,400 newspapers constituting over 90 percent of the total daily and Sunday newspaper circulation, and a substantial portion of the weekly newspaper circulation in the United States. Numerous

newspapers published in various parts of Massachusetts hold membership in ANPA.

Concerned with issues of general significance to the profession of journalism and the newspaper publishing business, ANPA seeks to keep its members informed of, and to provide meaningful input on, matters touching on these concerns. The Association's member newspapers, individually and through ANPA, are ever vigilant to protect the public's right under the First Amendment to information concerning the activities of government and matters of public interest.

The American Society of Newspaper Editors ("ASNE") is a nationwide, professional organization of more than 950 persons who hold positions as directing editors of daily newspapers throughout the United States. The purposes of the Society, which was founded over fifty years ago, include the maintenance of "the dignity and rights of the profession" (ASNE Constitution, Preamble) and the ongoing responsibility to improve the manner in which the journalism profession carries out its responsibilities in providing an unfettered and effective press in the service of the American people.

The Society of Professional Journalists, Sigma Delta Chi, is a voluntary, non-profit organization of more than 20,000 members representing every branch and rank of print and broadcast journalism. It is the largest and oldest organization of journalists in the United States.

The Reporters Committee for Freedom of the Press is a voluntary, unincorporated association of working news reporters and editors dedicated to protecting the First Amendment and freedom of information interests of the news media and the public. Since its founding in 1970, the Reporters Committee has appeared in virtually every significant press freedom case considered by the U.S. Supreme Court.

The decision of the Supreme Judicial Court of Massachusetts in the instant case, while clearly an aberration, represents a serious departure from libel jurisprudence as established by this

Court, and, therefore, is of significant interest to the members of ANPA, ASNE, the Society of Professional Journalists, Sigma Delta Chi, and the supporters of the Reporters Committee for the Freedom of the Press, all of whom cherish their right and their duty to inform the public on matters involving the conduct of public officials.

Your amici appreciate this opportunity to present these views, and we urge this Court to grant the Petition for Certiorari and to summarily reverse the opinion below.

SUMMARY OF ARGUMENT

In ruling for the first time that actual malice could be inferred even though the writer had a source whose "veracity and accuracy" the writer had no obvious reason to doubt, the Court below clearly departed radically from this Court's holdings in *New York Times Co.* v. *Sullivan,* 376 U.S. 254 (1964) and *St. Amant* v. *Thompson,* 390 U.S. 727 (1968). Where an order abridges freedom of the press in violation of the First and Fourteenth Amendments, summary reversal is mandated. *Oklahoma Publishing Co.* v. *District Court,* 430 U.S. 308, 311-12 (1979) (Petition for Certiorari granted and judgment summarily reversed where court's order abridged First Amendment).

In *New York Times Co.* v. *Sullivan,* this Court recognized that the right of free public discussion of the stewardship of public officials is a fundamental principle of the American form of government. 376 U.S. at 275. Seditious libel was rejected by this Court because it is antithetical to our political and judicial history. In order to guarantee free discussion of public conduct, this Court imposed the "actual malice" standard of knowing or reckless falsehood in public official libel cases. This case involves criticism of a sitting Governor and arose amid political controversy. *The Boston Globe* State House political columnist stated that the Governor of Massachusetts exhibited a condescending attitude toward other State House officials as exemplified by a call to a judge concerning [illegible]ient sentences in a highly publicized

gang rape case. The source for the story was the Treasurer of Massachusetts. The Supreme Judicial Court's reversal of summary judgment is a serious departure from *New York Times*. For the first time, a state supreme court has ruled that actual malice may be inferred even though the publisher had no reason to doubt the veracity of its source and published with a good faith belief in the truth of the publication.

The Supreme Judicial Court's unprecedented holding that an inference of malice may be drawn from a failure to investigate beyond a credible source is directly contrary to *New York Times* and *St. Amant* v. *Thompson*, 390 U.S. 727 (1968). If this decision is permitted to stand, working journalists, editors and publishers will be faced with a requirement of exhaustive investigation in every important news story. This holding makes summary judgment virtually unobtainable and imposes a negligence standard in public figure libel cases.

ARGUMENT

I. THIS COURT SHOULD SUMMARILY REVERSE THE OPINION OF THE SUPREME JUDICIAL COURT OF MASSACHUSETTS BECAUSE OF THE GRAVE DEPARTURE FROM ESTABLISHED CONSTITUTIONAL PRINCIPLES IN THIS FIRST AMENDMENT CASE.

In this public official libel case, the court below reversed the summary judgment in favor of the newspaper on the issue of actual malice. In so doing, the Supreme Judicial Court of Massachusetts committed errors of constitutional magnitude which are so clear as to warrant summary reversal under Supreme Court Rule 23.1. Where the order of the court below abridges freedom of the press in violation of the First and Fourteenth Amendments, summary reversal is particularly appropriate. *Oklahoma Publishing Co.* v. *District Court*, 430 U.S. 308, 311-12 (1979) (Petition for Certiorari granted and judgment summarily reversed where court's order abridges freedom of the press).

In ruling for the first time that actual malice could be inferred even though the writer had a source whose "veracity and accuracy" the writer had no obvious reason to doubt, the court below clearly departed radically from this Court's holdings in *New York Times Co.* v. *Sullivan*, 376 U.S. 254 (1964) and *St. Amant* v. *Thompson*, 390 U.S. 727 (1968). *St. Amant* holds that only where it can be shown with convincing clarity that the defendant entertained "serious doubts as to the truth of his publication" does the defendant act with reckless disregard for the truth. In this case, the reporter relied upon a statement of the Treasurer of the State of Massachusetts, a friend and confidant of the Governor. In spite of the inherent reliability of the source in this case, the Supreme Judicial Court (SJC) held that there were obvious reasons to doubt the veracity and accuracy of the information because the Treasurer did not disclose the source of his information. In ruling for the first time that an inference of malice may be drawn from a failure to investigate beyond a credible source, the SJC has imposed a negligence standard in the State of Massachusetts in public official libel cases. The ability of the press to write freely concerning the conduct of public officials in that state has been seriously abridged by this decision. Because of the continuing and irreparable harm to the public and the press in the state of Massachusetts, this Court should grant the petition for certiorari and summarily reverse the court below.

II. THE DECISION BELOW IS A SERIOUS DEPARTURE FROM *NEW YORK TIMES v. SULLIVAN* WHICH WILL RESULT IN SUBSTANTIAL RESTRICTIONS ON POLITICAL SPEECH

In *New York Times Co.* v. *Sullivan*, 376 U.S. 254 (1964), this Court first established constitutional protection for media defendants in defamation actions. This Court held that public officials must show that the defamatory statements were published with reckless disregard for the truth, or with knowledge of falsity. In extending First Amendment protection to the press, this Court reaffirmed its commitment to the principle that uninhibited discussion of public issues, and of the conduct of

public officials was fundamental to the American system of government.

This Court's language made it clear that state courts will be limited by constitutional constraints in all cases involving political commentary on the conduct of public officials.

> We hold today that the constitution limits a state's power to award damages for libel in actions brought by public officials against critics of official power.

376 U.S. at 283.

There is no more fundamental right in the history of our democracy than the right of the people and of the press to criticize, in the strongest terms, their elected officials. This is best illustrated by Justice Brennan's pronouncements in *New York Times*.

> Criticism of their official conduct does not lose its constitutional protection merely because it is effective criticism and hence diminishes their official reputations.
>
> If neither factual error nor defamatory content suffices to remove the constitutional shield from criticism of offical conduct, the combination of the two elements is no less inadequate. This is the lesson to be drawn from the great controversy over the Sedition Act of 1798, 1 Stat 596, which first crystallized a national awareness of the central meaning of the First Amendment.

376 U.S. at 273.

The Sedition Act of 1798 made it a crime to defame the President, Congress, or the federal government as a whole: to bring them "into contempt or disrepute." The Act made truth a defense, a liberalizing change from the English law of seditious libel which criminalized any criticism of the Crown whether true or false. But despite this reformist feature, the law was denounced by Thomas Jefferson and James Madison as a violation of the First Amendment—and the criticism carried the day. The Act

was allowed to expire after two years, and Congress repaid the fines of those convicted under it. See *New York Times*, 376 U.S. at 273-74.

This Court clearly recognized that seditious libel is antithetical to American political and judicial history. Justice Brennan then went on to invoke the words of James Madison:

> "In every state, probably, in the Union, the press has exerted a freedom in canvassing the merits and measures of public men, of every description which has not been confined to the strict limits of the common law. On this footing the freedom of the press has stood; on this foundation it yet stands . . . " 4 Elliot's Debates, supra, p. 570. The right of free public discussion of the stewardship of public officials was thus, in Madison's view, a fundamental principle of the American form of government.

376 U.S. at 275.

Freedom of expression in this country was born in the spirit of debate that preceded our revolution. The trial of colonial printer John Peter Zenger in 1735 for seditious libel doomed the use of seditious libel as a restraint on free expression for the balance of our colonial period. Nelson, *Seditious Libel in Colonial America*, 3 Am. J. Legal Hist. 160 (1959).

It should be remembered that the *New York Times* case arose amid political controversy. The newspaper had carried an advertisement under the heading "Heed Their Rising Voices". This political advertisement constituted an exhortation on behalf of the leaders of the civil rights movement in the south, and in particular, Dr. Martin Luther King, Jr., then a minister in Montgomery, Alabama. The publication alleged that "Southern violaters" had hounded Dr. King, had arrested him seven times, and had persecuted black students. Mr. Sullivan was an elected Commissioner in Montgomery in general charge of the police in that city. He claimed that the article reflected upon his official conduct, though he was not named in the article. Mr. Sullivan

demonstrated at trial that the publication contained factual inaccuracies and he was awarded $500,000.00. This judgment was affirmed by the Alabama Supreme Court.

In reversing the judgment, this Court severely limited the common law standard of liability without fault by holding that factually incorrect statements and unjustified comments or opinions published concerning public officials were constitutionally protected unless published with "actual malice".

> The constitutional guarantees require, we think, a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with "actual malice" — that is, with knowledge that it was false or with reckless disregard of whether it was false or not.

356 U.S. at 279-80

The case before this court was also born of political controversy. Herein, *The Boston Globe's* State House political columnist wrote in his Sunday column that the sitting Governor of Massachusetts exhibited a "condescending attitude" toward other state officials as exemplified by a call to a judge to complain of "extraordinarily lenient" sentences given to criminal defendants in a gang rape case. The criminal trial and the subsequent sentences were the subject of intense public debate and media attention. The columnist's source was the Treasurer of the state of Massachusetts, a close personal friend and political advisor to Governor King as well as a close friend of the reporter.

The Supreme Judicial Court's reversal of summary judgment in this case severely limits the rights of the people of Massachusetts, and the rights of members of the press in that state to express their political views without fear of subsequent retaliation in the form of libel proceedings in state court.

Freedom of political debate is at the foundation of this Court's decision in *New York Times*. The legacy of that historic case has been severely harmed by the decision of the Supreme

Judicial Court. It is ironic, indeed, that the Commonwealth of Massachusetts, the state in which Americans first fought to overthrow British tyranny, and where political debate was most intense during our colonial period, should be the first jurisdiction to seriously erode *New York Times* v. *Sullivan.* This Court should grant the Petition for Certiorari and erase this case from our jurisprudence so that political speech will continue to enjoy unfettered constitutional protection.

III. THE MISAPPLICATION OF THE CONSTITUTIONAL RULE OF *ST. AMANT v. THOMPSON* IS REVERSIBLE ERROR

The Supreme Judicial Court's improper application of the well established rule of *St. Amant* v. *Thompson,* is clear error warranting summary reversal.

Following the decision in *New York Times,* this Court decided a series of cases which refined the definitions of "actual malice" and reckless disregard for the truth.

In *Garrison* v. *Louisiana*, 379 U.S. 64, 74 (1964), this Court held that actual malice in the form of reckless disregard for truth requires "a high degree of awareness of their probable falsity."

This Court further refined the definition of actual malice in *St. Amant* v. *Thompson*, 390 U.S. 727, 731 (1968), holding that "[t]here must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication."

> "Reckless disregard," it is true, cannot be fully encompassed in one infallible definition. Inevitably its outer limits will be marked out through case-by-case adjudication, as is true with so many legal standards for judging concrete cases, whether the standard is provided by the Constitution, statutes, or case law. Our cases, however, have furnished meaningful guidance for the further definition of a reckless publication. In *New York Times, supra,* the plaintiff did not satisfy his burden because the record failed to show that the

> publisher was aware of the likelihood that he was circulating false information. In *Garrison* v. *Louisiana*, 379 U.S. 64 (1964), also decided before the decision of the Louisiana Supreme Court in this case, the opinion emphasized the necessity for a showing that a false publication was made with a "high degree of awareness of . . . probable falsity." 379 U.S. at 74. Mr. Justice Harlan's opinion in *Curtis Publishing Co.* v. *Butts*, 388 U.S. 130, 153 (1967), stated that evidence of either deliberate falsification or reckless publication "despite the publisher's awareness of probable falsity" was essential to recovery by public officials in defamation actions. These cases are clear that reckless conduct is not measured by whether a reasonably prudent man would have published, *or would have investigated before publishing*. There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication. Publishing with such doubts shows reckless disregard for truth or falsity and demonstrates actual malice. (Emphasis added).

This Court's ruling in *St. Amant* identified the following evidence that may be employed to attempt to establish "actual malice":

1. The communication has been fabricated by the defendant;

2. It is the product of the defendant's imagination;

3. It is based wholly on an unverified anonymous telephone call;

4. It contains allegations that are so inherently improbable that only a reckless person would put them in circulation;

5. It is published despite obvious reasons to doubt the veracity of the informant upon whom the article is based or the accuracy of his reports.

It is undisputed that mere failure to investigate does not in itself establish "actual malice." *St. Amant, supra,* at 733. It is equally well settled that a mistake in interpreting events or documents does not evidence the necessary state of mind. *Time, Inc.* v. *Pape,* 401 U.S. 279 (1971); *Orr* v. *Argus-Press Co.,* 586 F.2d 1108 (6th Cir. 1978), *cert. denied,* 440 U.S. 960 (1979). Publishing facts harmful to the plaintiff while not publishing others that were mitigating does not constitute actual malice. *Reliance Insurance Co.* v. *Barron's,* 442 F. Supp. 1341, 1352 (S.D.N.Y. 1977). It is similarly insufficient for a plaintiff to point to vituperation or exaggerated language. *Guthrie* v. *Annabel,* 50 Ill. App.3d 969, 365 N.E.2d 1367 (1977); *Rose* v. *Koch,* 278 Minn. 235, 154 N.W.2d 409 (1967). Such evidence does not indicate a publisher's lack of belief in the truth of his statements.

Investigative failures, if they do not in context indicate knowledge of falsity or subjective awareness of probable falsity, cannot themselves constitute "actual malice." *St. Amant* v. *Thompson, supra,* at 733. This Court has reaffirmed the rule set forth in *St. Amant* without reservation or modification in numerous cases in recent years. [1]

In *St. Amant,* there was "no evidence in the record of Albin's [the source's] reputation for veracity." 390 U.S. at 733. By contract, there is extensive evidence in the record below of the inherent reliability of State Treasurer Crane.

The Supreme Judicial Court has held for the first time that an inference of malice may be drawn from a failure to investigate beyond a credible source. This holding is tantamount to a reversal of *New York Times* and *St. Amant.* Permitting this inference of malice imposes an impossible standard of care upon working

---

[1] *See e.g.,, Bose Corp. v. Consumer Union of United States Inc.,* 466 U.S. at 411 n.30; *Herbert v. Lando* 221 U.S. 153.1516 (1979); *Gertz v. Robert Welch Inc.,* 418 U.S. 323,3332 (1074). *Time. Inc. v. Pape* 401 Pape. 401 CS 279.291.92. *See also Wolston v. Reader's Digest Assn. Inc.* 443 U.S. 156.163 (1979); *Monitor Patriot Co. v. Roy,* 401 US 265,276 (1971); *Beckley Newspapers Corp v. Hanks.* 389 U.S. 81, 84-85 (1967). *Garrison v. Louisiana.* 370 U.S. 64. 175-76 (1964).

journalists, editors and publishers. If this decision is permitted to stand, journalists will be faced with a requirement of exhaustive investigation of every important news story for it can be argued in every case that further investigation is warranted, particularly where a statement is later found to be inaccurate. As a consequence of this holding, summary judgment becomes virtually unobtainable,[2] and a negligence standard is imposed in public figure libel cases. More importantly, significant stories — although well researched — may be delayed or abandoned.

It is even conceivable that trial courts could impose *de facto* strict liability where a plaintiff can demonstrate that a portion of the publication is inaccurate. Under the logic of the opinion below, the existence of a false statement of fact would establish a failure to adequately investigate giving rise to an "inference" of actual malice in every case.

This negation of the well established principles of *New York Times* and *St. Amant* should not be permitted to stand.

---

[2] The decision below is in direct contravention of this Court's ruling in *Anderson* v. *Liberty Lobby*, 477 U.S. 242 (1986) which requires clear and convincing evidence of actual malice in order to defeat a summary judgment motion by defendant.

CONCLUSION

Because this case presents serious constitutional errors, your amici urge this Court to grant the Petition for Certiorari and summarily reverse the opinion of the Supreme Judicial Court of Massachusetts.

Respectfully submitted,

RICHARD M. SCHMIDT, JR.
Cohn and Marks
1333 New Hampshire Ave., NW
Washington, DC 20036
(202) 293-3860
Attorney for Amicus Curiae American Society of Newspaper Editors

*ARTHUR D. MCKEY
Hanson, O'Brien, Birney & Butler
888 17th Street, NW
Washington, DC 20006
(202) 298-6161
Attorneys for Amici Curiae

BRUCE W. SANFORD
Baker & Hostetler
1050 Connecticut Ave., NW
Washington, DC 20036
Attorney for Amicus Curiae Society of Professional Journalists, Sigma Delta Chi

W. TERRY MAGUIRE
P.O. Box 17407
Dulles International Airport
Washington, DC 20041
(703) 648-1000
Attorney for Amicus Curiae American Newspaper Publishers Association

JANE E. KIRTLEY
800 18th Street, NW
Suite 300
Washington, DC 20006
Attorney for Amicus Curiae Reporters Committee for Freedom of the Press

* Counsel of Record